

Underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 1061

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

RICK MERA

AN ACT

RELATING TO HEALTH CARE; PROVIDING EMPLOYEE PROTECTION AGAINST
EMPLOYER RETALIATION FOR CERTAIN ACTS; PROVIDING PENALTIES;
DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the
"Conscientious Employee Protection Act".

Section 2. LEGISLATIVE FINDING AND DECLARATION. -- The
legislature finds and declares that it is the public policy of
the state to encourage health care providers to notify
applicable government entities of suspected unsafe patient care
and conditions. The legislature encourages this reporting in
order to protect patients and in order to assist those
government entities charged with ensuring that health care is
safe.

Underscored material = new
[bracketed material] = delete

1 Section 3. DEFINITIONS. -- As used in the Conscientious
2 Employee Protection Act:

3 A. "employer" means any individual, partnership,
4 association, corporation or any person or group of persons
5 acting directly or indirectly on behalf of, or in the interest
6 of, an employer with the employer's consent and shall include
7 the state government and its agencies, political subdivisions or
8 instrumentalities;

9 B. "employee" means any individual who performs
10 services for and under the control and direction of an employer
11 for wages or other remuneration;

12 C. "public body" means:

13 (1) the United States congress and state
14 legislature or any popularly elected local government body, or
15 any of their members or employees;

16 (2) any federal, state or local judiciary or
17 any members or employees;

18 (3) any grand or petit jury;

19 (4) any federal, state or local regulatory,
20 administrative public agency or authority;

21 (5) any federal, state or local law enforcement
22 agency, prosecutorial office, police or peace officer;

23 (6) any federal, state or local department of
24 an executive branch of government; or

25 (7) any division, board, bureau, office,

1 committee or commission of any public body;

2 D. "supervisor" means any individual with an
3 employer's organization who has the authority to direct and
4 control the work performance of the affected employee, or who
5 has the authority to take corrective action regarding the
6 violation of the law, rule or regulation of which the employee
7 complains;

8 E. "retaliatory action" means the discharge,
9 suspension or demotion of an employee, including other adverse
10 employment action taken against an employee in the terms and
11 conditions of employment; and

12 F. "improper quality of patient care" means, with
13 respect to patient care, any practice, procedure, action or
14 failure to act of an employer that is a health care provider
15 that violates any law or any rule, regulation or declaratory
16 ruling adopted pursuant to law, or any professional code of
17 ethics.

18 Section 4. EMPLOYER DISCRIMINATION OR RETALIATORY ACTION
19 PROHIBITED. --An employer shall not discriminate or take any
20 retaliatory action against an employee because the employee does
21 any of the following:

22 A. discloses, or threatens to disclose, to a
23 supervisor or to a public body an activity, policy or practice
24 of the employer or another employer with whom there is a
25 business relationship, that the employee reasonably believes is

1 in violation of a law, or a rule or regulation promulgated
2 pursuant to law, or in the case of an employee who is a licensed
3 health-care professional, reasonably believes the activity,
4 policy or practice constitutes an improper quality of patient
5 care;

6 B. provides information to, or testifies before, any
7 public body conducting an investigation, hearing or inquiry into
8 any violation of law, or a rule or regulation promulgated
9 pursuant to law, by the employer or another employer with whom
10 there is a business relationship, or in the case of an employee
11 who is a licensed health-care professional, provides information
12 to, or testifies before, any public body conducting an
13 investigation, hearing or inquiry into the quality of patient
14 care; or

15 C. objects to or refuses to participate in any
16 activity, policy or practice that the employee reasonably
17 believes:

18 (1) is in violation of a law, or a rule or
19 regulation promulgated pursuant to law, or, if the employee is a
20 licensed health-care professional, constitutes improper quality
21 of patient care;

22 (2) is fraudulent or criminal; or

23 (3) is incompatible with a clear mandate of
24 public policy concerning public health, safety, welfare or
25 protection of the environment.

Underscored material = new
[bracketed material] = delete

1 Section 5. CIVIL PENALTY. --An employer guilty of violating
2 the provisions of Section 4 of the Conscientious Employee
3 Protection Act shall be subject to a civil penalty not to exceed
4 twenty-five thousand dollars (\$25,000). The civil penalty shall
5 be assessed and recovered in a civil action brought in the name
6 of the people of New Mexico by the attorney general or
7 appropriate district attorney in any court of competent
8 jurisdiction.

9 Section 6. DISCRIMINATORY TREATMENT--REBUTTABLE
10 PRESUMPTION. --Any type of discriminatory treatment of an
11 employee who has presented a grievance or complaint or has
12 initiated, participated or cooperated in any investigation or
13 proceeding of any governmental entity where the employer had
14 knowledge of the employee's initiation, participation or
15 cooperation, shall raise a rebuttable presumption that the
16 discriminatory action was taken by the employer in retaliation
17 if the discriminatory action occurs within one hundred eighty
18 days of the filing of the grievance or complaint. For purposes
19 of this section, "discriminatory treatment of an employee"
20 includes discharge, demotion, suspension or any other
21 unfavorable changes in the terms or conditions of employment, or
22 threat of any of these actions. The presumptions in this
23 section shall be presumptions affecting the burden of producing
24 evidence as provided in Article 3 of the Rules of Evidence
25 governing evidence.

